CONSTRUCTING AFFIRMATIVE ACTION

THE STRUGGLE FOR EQUAL EMPLOYMENT OPPORTUNITY

DAVID HAMILTON GOLLAND

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Constructing Affirmative Action

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Preface

Richard Nixon wanted to be remembered as a "civil rights president" rather than "Tricky Dick" of the popular imagination. Historians such as Joan Hoff and, more recently, British scholar Kevin Yuill have nearly achieved that goal for him, noting the advances made in equal employment opportunity during the early 1970s.[1] But the reality is that most of these advances were made in the courts, where Lyndon Johnson–era programs and laws were being challenged and upheld.

When pressed to defend Nixon's actual civil rights accomplishments, these modern apologists point to one program: the Philadelphia Plan. They recount how the president, with his Department of Labor deputies George Shultz and Arthur Fletcher, shepherded this first affirmative action program through a heated congressional battle and challenges in the federal courts. But they minimize the *real* history of the Philadelphia Plan, which was developed by Johnson appointees after years of experimental attempts to integrate the skilled building construction trades. Nixon implemented the Philadelphia Plan in order to *appear* to be committed to civil rights, but he abandoned it after the hard-hat revolts less than six months later. In fact, Nixon was not a "civil rights president" at all; by 1971 his black appointees were resigning in disgust, and he even appointed a secretary of labor with a plan to resegregate vocational training.

I wrote *Constructing Affirmative Action* to tell the real story of Richard Nixon and civil rights. But I also wrote it to tell quite another story altogether: the integration of the building construction trades. In the 1950s blacks working in building construction were typically relegated to unskilled or residential work, while the skilled commercial construction work—with its lucrative wages—was done almost exclusively by whites. After years of struggle, the skilled unions had gained control of the hiring process, but their membership—despite increasing calls for reform by their leaders—remained racially segregated. With the postwar increase in federal construction spending, specifically urban renewal programs, the prospect of all-white skilled work crews erecting structures in predominantly black neighborhoods was one of the most obvious—and galling—exam-

ples of Jim Crow outside the American South. Civil rights organizations, labor leaders, and the federal government spent two decades working to right this wrong, and their relative successes and failures in integrating the trades are the other story I set out to tell.

This work is due in no small part to the copious assistance I have received over the years. The names are too many to mention, but I shall try. Bob Reynolds, now retired, of the George Meany Archives got me started, with patience and compassion. Jennifer Brathovde, Jeff Flannery, Joseph Jackson, Lia Kerwin, Patrick Kerwin, and Bruce Kirby made the nine-to-five at the Library of Congress Manuscript Reading Room not only tolerable but enjoyable—no small feat. I am grateful to Tab Lewis at the civilian records section of the National Archives in College Park, Maryland; Allen Fisher, Claudia Anderson, Laura Eggert, and Elizabeth McLelland at the Johnson Archives in Austin; and the small but knowledgeable staffs of the Schomburg Center in Harlem, the Urban Archives at Temple University in Philadelphia, and the Historical Society of Pennsylvania. I thank the Johnson Foundation, the Colonial Dames of America, and Thomas W. Smith for the fellowships that kept me on the road, and Harold and Betsi Closter, Cynthia and Jon Simpson, and Tom and Giulia Terbush for the roofs that kept me dry.

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University Press of Kentucky, as well as Steven F. Lawson, David Cobb, Linda Lotz, and Anne Dean Watkins.

Finally, I must express a very special thanks to Zelda Rose Golland, whose imminent arrival spurred the completion of this work.

Abbreviations

AFL	American Federation of Labor
AFL-CIO	American Federation of Labor–Congress of Industrial Organizations
BART	Bay Area Rapid Transit
BAT	Bureau of Apprenticeship and Training, U.S. Department of Labor
BCTD	Building Construction Trades Department, AFL-CIO
BSCP	Brotherhood of Sleeping-Car Porters
BTD	Building Trades Department, AFL
CCRB	Cleveland Community Relations Board
CEO	chief executive officer
CHR	Commission on Human Relations (Philadelphia)
CIO	Congress of Industrial Organizations
CIU	Congress of Independent Unions
CORE	Congress of Racial Equality
CRC	Civil Rights Commission
DOJ	Department of Justice
DOL	Department of Labor
EEOC	Equal Employment Opportunity Commission
FAA	Federal Aviation Administration
FCCCS	Federal Contract Construction Compliance Subcommittee (Philadelphia)
FEB	Federal Executive Board
FEPC	Fair Employment Practices Committee
FHWA	Federal Highway Administration

GAO	General Accounting Office
GSA	General Services Administration
HEW	Department of Health, Education, and Welfare
HHFA	Housing and Home Finance Agency
HUD	Department of Housing and Urban Development
IBEW	International Brotherhood of Electrical Workers
JAC	Joint Apprenticeship Committee
JOBART	Job Opportunities—Bay Area Rapid Transit
MAP	Manpower Advancement Program, NUL
MCA	Mechanical Contractors' Association
NAACP	National Association for the Advancement of Colored People
NASA	National Aeronautics and Space Administration
NLRB	National Labor Relations Board
NTULC	Negro Trade Union Leadership Council
NUL	National Urban League
OFCC	Office of Federal Contract Compliance
OPP	Operational Plan for Philadelphia
PCEEO	President's Committee on Equal Employment Opportunity
PCEO	President's Council on Equal Opportunity
PCGC	President's Committee on Government Contracts
PCGCC	President's Committee on Government Contract Compliance
RPP	Revised Philadelphia Plan
UAW	United Auto Workers
WPA	Works Progress Administration

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Introduction

In April 1969, at a luncheon in Philadelphia sponsored by the Jewish Labor Committee and the Negro Trade Union Leadership Council, AFL-CIO legislative director Andrew J. Biemiller stated that the embattled "labor–liberal–civil rights coalition must be maintained and strengthened because its job isn't done."[1] Biemiller's worry—that a rift was developing in the coalition over the issue of affirmative action—was well founded. The building construction trades' notorious exclusion of most blacks from all but the meanest jobs did not jibe with the umbrella organization's official attitude of equal opportunity. The previous autumn had seen the election of Richard Nixon to the presidency, and whereas President Johnson's secretary of labor, Willard Wirtz, had played an active role in maintaining the rights-labor coalition by promoting programs that aided union leaders in their drive to integrate, Nixon's secretary of labor, George Shultz, had little faith in union efforts to end segregation at construction sites.

Shortly thereafter, President Nixon announced that he fully supported the Philadelphia Plan, an affirmative action program that required federal construction contractors to hire and train minority workers in several of the construction trades in Philadelphia. This decision went against the wishes of the union leadership as well as a large section of the U.S. Congress and especially the General Accounting Office, Congress's taxpayer watchdog. But it had the political purpose of dividing two groups that had coalesced against the administration: civil rights and organized labor.

In the 1950s the building construction trade unions were notoriously segregated throughout the United States, with the vast majority of black members confined to the less skilled "trowel" trades, and the coveted slots in the skilled trades largely passing from white father or uncle to white son or nephew. The federal government was a significant funding source for construction, so the Eisenhower and Kennedy administrations, through Vice Presidents Nixon and Johnson, attempted to force federal contractors to actively seek minority job applicants. The vice presidents pushed the federal bureaucracy to enforce a nondiscrimination clause in federal contracts, and they in turn were pushed by outside actors and events such as

civil rights organizations and public protests. At first, the goal was tokenism: breaking the uniformity of whites in the skilled jobs. But civil rights leaders wanted more. With riots breaking out at construction sites, President Johnson (continuing work started by Kennedy) got Congress to pass the Civil Rights Act of 1964, establishing the principle of fair employment.

Whites often viewed the civil rights movement as being committed to "color-blind" objectives in education, employment, and suffrage.[2] The reality was more complicated. Older, established organizations such as the National Association for the Advancement of Colored People and the National Urban League advocated legislation and worked through the courts and with business leaders to achieve equal opportunity; newer organizations such as the Congress of Racial Equality, the Southern Christian Leadership Conference, and the Student Nonviolent Coordinating Committee pursued the same goals through nonviolent direct action, including marches, sit-ins, and boycotts. They seemed focused on obtaining what was often referred to as a "level playing field"—basic citizenship rights for African Americans—and in addition to working to integrate public spaces and achieve voting rights, these organizations attacked job discrimination. They recognized that "color-consciousness" would be needed to overcome discrimination; after all, "color-blindness" would not erase the inequalities that resulted from the history of discrimination. Later, when the nation's urban unemployed erupted into violence, the need to achieve real equality of employment opportunity had never seemed so pressing.

Between 1965, when President Johnson defined affirmative action as a valid federal goal, and 1972, when President Nixon named one of affirmative action's chief antagonists to head the Department of Labor, government officials addressed pervasive employment discrimination in earnest. No longer would it be sufficient merely to eliminate racial discrimination on paper or in rhetoric; no longer would token integration suffice. Employers and union officials would have to actively promote the training, hiring, and retention of nonwhite applicants—and show results to prove it.

Since all Americans were entitled to attend school up to the twelfth grade, the *Brown* decision (that segregation in public schools was inherently unequal) could be heralded as an important advance by all but the most racist southerners. And the Voting Rights Act of 1957 won the support of most northern whites because it confirmed the constitutional right of all adult citizens to participate in the election of their leaders. Blacks in the North had been legally voting for decades; southern black votes did not

pose a threat to northern white interests or, for that matter, to the political interests of southern whites living outside the Black Belt.

Equal employment opportunity, by contrast, pertained to the allocation of a limited resource—jobs. By attempting to give members of historically disadvantaged groups a better chance to obtain jobs that had traditionally been limited to whites, affirmative action had the potential to alienate large segments of white society that viewed school desegregation and voting rights from a neutral or even a positive standpoint. By attempting to establish true equality of opportunity, affirmative action meant that some whites—especially the least talented ones—stood to lose the jobs or potential jobs that their skin color had entitled them to in the past. Thus, affirmative action was—and continues to be—controversial.

One function of an introduction is to state up front what the work is *not*. This book is not a history of the civil rights movement; it is a history of a civil rights issue during the period generally referred to by historians as the civil rights era. This is not a book about the American South. During the period under discussion, 1956 to 1973, the civil rights movement in the South was focused on ending de jure (legal) segregation. This work focuses on a civil rights problem arising in the context of a society that had ostensibly left segregation behind—the North and the West. Additionally, although this is a history of affirmative action, it is limited to employment; it is not a book about affirmative action in higher education. This is not a history of deindustrialization, although much of the action occurs in the context of deindustrialization; nor is this a history of the urban crisis, although the long, hot summers of the mid-1960s would influence the decisions made by the key figures under discussion. Finally, this book does not pretend to be a political history of the era, although it touches on matters political and draws conclusions about some aspects of politics.

This book treats the two iterations of the Philadelphia Plan as the collective watershed moment in the origin of affirmative action. Beginning with an examination of the history of inequality in the building construction trades, chapters 1 and 2 cover the period before passage of the Civil Rights Act, when the Eisenhower and Kennedy administrations attempted to compel the federal bureaucracy to enforce nondiscrimination clauses in contracts. The locus of activity then moved from leaders pushing the bureaucracy to the bureaucrats themselves, in some instances acting beyond the intent of elected and appointed leaders. Empowered by the act of Congress and powerful executive orders, the Office of Federal Contract

Compliance spent the bulk of the Johnson administration attempting to implement affirmative action programs tailored to the particular circumstances of individual cities. Chapter 3 details how, through trial and error, federal officials worked in several test cities before developing the Cleveland and Philadelphia Operational Plans in 1967. I examine how these plans worked on the ground and in what areas they did and did not succeed in effecting fair employment.

Chapter 4 shows how the Philadelphia Plan—and, by extension, affirmative action—came under fire from elements in Congress as "reverse racism," ostensibly a violation of the 1964 Civil Rights Act. The Johnson administration, on its way out of office during 1968, did not fight for these programs, but the incoming Nixon administration latched on to a revised version to take on the mantle of civil rights leadership and punish the unions for political opposition. The White House defended the plan against enemies in Congress and in court. In chapter 5 I look at the implementation and prolonged effects of the Philadelphia Plan, its mandatory spin-offs, and its voluntary knockoffs, and I examine how the administration, organized labor, and the civil rights leadership worked to pursue fair employment in the skilled building trades in the 1970s and beyond.

Ultimately, this book makes three arguments. First, Richard Nixon was *not* the "father of affirmative action" or even a "civil rights president" by the standard set by his predecessor in the White House. Nixon and his administration did not contribute anything particularly novel to the cause of equal employment opportunity. Although my treatment of Nixon's presidency does not begin until chapter 4, this argument is developed throughout the book. First, Nixon was an aloof civil rights vice president (chapter 1); second, Nixon's only civil rights initiative, the Philadelphia Plan, was not his own—it was barely changed from the Johnson-era version (chapters 3 and 4); third, he pushed the Philadelphia Plan for his own political purposes rather than to help black people (chapter 4); and fourth, he abandoned the plan five months after Congress acceded to it—as soon as the hard-hat revolts made the plan politically inexpedient (chapter 5). The popular imagination is right: at least when it came to civil rights, Nixon was "Tricky Dick."

Second, the federal bureaucracy, which initially worked *against* the implementation of equal employment opportunity programs through inertia, came to be the most effective player *for* their implementation during the 1960s and 1970s—by thinking "outside the box." Thus, this book also makes the case for an understanding of the federal bureaucracy as an

active agent in a representative democracy—especially in chapters 2 and 3. Looking back from 1982, one journalist referred to affirmative action programs as having had "a sort of bureaucratic virgin birth."[3] The popular imagination is wrong: bureaucracy is (or at least it can be) good.

And finally, this book is about affirmative action *as* equal opportunity. Like the Nixon argument, this story is found throughout the book: demonstration of the need for affirmative action (chapter 1), grassroots calls for affirmative action programs (chapter 2), development of these programs (chapters 3 and 4), and implementation of and opposition to these programs (chapter 5). Because some of the original players favored convenient shortcuts, such as quotas rather than the long, hard slog of working toward real equality of opportunity, and because politicians and pundits of the Right have seized on that fault as convenient propaganda, the popular imagination has come to define affirmative action as inherently unequal: less-qualified blacks being employed or promoted rather than better-qualified whites. But that isn't what affirmative action was or is. This book shows that affirmative action—as it was originally intended—is about breaking down barriers to equal opportunity. The popular imagination is wrong: affirmative action in employment is equal employment opportunity.

An employer once told me it's okay to give a less-qualified black a job over a better-qualified white in recognition of the unusual trials he has had to overcome just by being black. Perhaps that's true, if those trials made for a person who was actually more qualified in reality than on paper. There may be a value, in some jobs, to inner-city "street smarts" that a white job applicant may not have, and the reality of the black underclass is that its members must work harder to get to the same place as their white counterparts. But that isn't affirmative action.

Edward Sylvester, President Johnson's federal contract compliance director, put it this way: "affirmative action is anything that you have to do to get results. But this does not necessarily include preferential treatment. The key word here is 'results.'" And President Bill Clinton, in a 1995 speech, said that affirmative action "does not mean—and I don't favor—the unjustified preference of the unqualified over the qualified of any race or gender. It doesn't mean—and I don't favor—numerical quotas. It doesn't mean—and I don't favor—rejection or selection of any employee or student solely on the basis of race or gender without regard to merit."[4]

Affirmative action means carefully identifying areas of inequality, taking a series of positive steps to alleviate that inequality, and follow-